

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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UNITED STATES OF AMERICA,

Plaintiff(s),

v.

SEBASTIAN M. PAULIN, JR., et al.,

Defendant(s).

Case No. 2:11-CR-381 JCM (GWF)

ORDER

Presently before the court are Magistrate Judge Foley's report and recommendation. (Doc. # 99). Defendant Estelita Paulin filed an objection to the recommendation (doc. # 102), and the government filed a response (doc. # 105).

Trial for this case is presently set for June 1, 2015. (*See* doc. # 107). On August 19, 2014, defendant Estelita Paulin filed a motion to dismiss count eleven of the indictment. (Doc. # 80). Defendant Sebastian Paulin joined the motion. (Doc. # 84). Magistrate Judge Foley heard oral argument on this motion and entered a report and recommendation that defendants' motion to dismiss count eleven of the indictment be denied. (Doc. # 99).

Defendants argue that count eleven contains no allegation of a single amount of money above the reporting requirement that was subsequently divided and deposited into sub-threshold amounts. Defendants assert that this omission, which renders count eleven's factual allegations insufficient to support the elements of structuring, is not cured because the government grouped six months' worth of deposits into a single count.

The government responds that the defendant's objections merely reargue the same arguments in its initial motion before Magistrate Judge Foley. (Doc. # 105). Therefore, the government re-alleges its response to defendant's motion to dismiss, as well as the arguments

1 received during oral argument. (Doc. # 105). The government requests this court adopt Magistrate  
2 Judge Foley's report and recommendation in full. (Doc. # 105).

3 This court "may accept, reject, or modify, in whole or in part, the findings or  
4 recommendations made by the magistrate." 28 U.S.C. § 636(b)(1). Where a party timely objects  
5 to a magistrate judge's report and recommendation, then the court is required to "make a de novo  
6 determination of those portions of the [report and recommendation] to which objection is made."  
7 28 U.S.C. § 636(b)(1). Where a party fails to object, however, the court is not required to conduct  
8 "any review at all . . . of any issue that is not the subject of an objection." *Thomas v. Arn*, 474 U.S.  
9 140, 149 (1985).

10 Count eleven of the superseding indictment alleges:

11 On or about the dates set forth below, in the State and Federal District of Nevada,  
12 Sebastian M. Paulin, Jr., M.D. and Estelita A. Paulin, defendants herein, did  
13 knowingly and for the purpose of evading the reporting requirements of Title 31,  
14 United States Code, Section 5313(a), and the regulations promulgated thereunder,  
15 structure, attempt to structure and assist in structuring the following transactions  
with Wells Fargo Bank, a domestic financial institution using account number  
identified herein as x2072 and Bank of America, a domestic financial institution,  
using account number identified herein as x9724:

16 (Doc. # 29 at 7.)

17 Count eleven then lists sixty-nine cash deposits into the foregoing accounts that occurred  
18 from February 7, 2011 through August 30, 2011. All of the listed deposits were in the amount of  
19 \$10,000, with the exception of a deposit on February 16, 2011 in the amount of \$9,630 and a  
20 deposit on March 21, 2011 in the amount of \$9,661. Each of the deposits allegedly occurred  
21 on separate dates, with the exception of April 11, 2011, May 2, 2011, May 9, 2011, and June 13,  
22 2011, when two deposits in the amount of \$10,000 were made on the same date.

23 The superseding indictment alleges that defendants violated 31 U.S.C. §§ 5324(a)(3) and  
24 (d)(1)-(2); 31 CFR § 103.11; and 18 U.S.C. § 2. (Doc. # 29 at 7-10). Defendants argue that count  
25 eleven should be dismissed because it fails to allege sufficient facts to support the elements of a  
26 structuring offense under 31 U.S.C. § 5324(a)(3).

27 The court finds that Magistrate Judge Foley did not err in finding that defendant's motion  
28 to dismiss should be denied. The court agrees that the superseding indictment sufficiently alleges

1 the elements of the offense of structuring or attempting to structure a transaction involving a  
2 domestic financial institution in violation of 31 U.S.C. § 5324(a)(3).

3 Therefore, after reviewing Magistrate Judge Foley's report, defendant's objections, the  
4 government's response, and the underlying briefs de novo, the court adopts the report and  
5 recommendation in full.

6 Accordingly,

7 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the report and  
8 recommendation of Magistrate Judge Foley (doc. # 99) regarding defendants Estelita and Sebastian  
9 Paulin's motion to dismiss (doc. # 80) be, and the same hereby is, ADOPTED in its entirety.

10 IT IS FURTHER ORDERED that defendants Estelita and Sebastian Paulin's motion to  
11 dismiss count eleven of the superseding indictment (doc. # 80) be, and the same hereby is,  
12 DENIED without prejudice.

13 DATED March 3, 2015.

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15 UNITED STATES DISTRICT JUDGE